UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1376
13 June 2000

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1376th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 8 March 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

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GE.00-41008 (E)

The meeting was called to order at 10.10 a.m.

SOLEMN DECLARATION BY THE NEWLY ELECTED MEMBERS OF THE COMMITTEE UNDER RULE 14 OF THE RULES OF PROCEDURE (agenda item 1)

1. In accordance with rule 14 of the rules of procedure, Mr. BOSSUYT, a re-elected member of the Committee, made the following solemn declaration:

> "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously."

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Second, third and fourth periodic reports of Zimbabwe (CERD/C/329/Add.1) (continued)

2. At the invitation of the Chairman, Mr. Chinamasa (Zimbabwe) took his place at the Committee table.

3. Mr. CHINAMASA (Zimbabwe) stressed that resolution of the land issue would be of crucial importance for the political future of Zimbabwean society.

4. The newly independent Republic of Zimbabwe had inherited, on its birth in 1980, a country divided in accordance with the apartheid system into "white areas", comprising 16.5 million hectares of urban and rural land and held under freehold title by 225,000 whites, and communal lands, comprising 16 million hectares occupied by 12 million blacks. Following the exodus of whites after independence, the total area of the white-owned land remained in the hands of a mere 12,000 whites. An initial distribution had enabled black peasants from the communal areas to buy, under individual title, 3.5 million hectares of white-owned land. At the current time, the land held by black Zimbabweans comprised 16 million hectares of marginal and infertile communal land and 3.5 million hectares owned by individual farmers. For their part, the remaining 4,000 white owners held 13.3 million hectares of agricultural land. The Government aimed to implement a land redistribution programme under which 8.3 million hectares would be taken from the white-owned land and redistributed among black farmers. Five million hectares would remain in the hands of white farmers.

5. In response to the question whether the Zimbabwean Government was conducting land reform or a land redistribution programme, he said that it was doing both at the same time, with the emphasis on redistribution, because of the lack of resources to conduct a land-reform programme. At the same time, it planned, in the long term, to implement a nationwide land-reform programme which would cover all land, including communal land, with a view to facilitating the implementation of an effective environmental protection programme. Eventually, it aimed to set in place a communal land ownership system similar to a freehold system.

6. With regard to land acquisition, the question whether the land for redistribution to blacks should be bought from the current white owners or simply seized without compensation was exciting heated debates in Zimbabwe. Adherents of the first approach believed that the owners should receive some compensation while those of the second argued that the owners, or their ancestors, had not paid for the land themselves. To date, however, all acquisitions had been made against compensation and the land had been freely redistributed to residents from over-populated areas. In carrying out its land redistribution programme, the Government was committed to preserving the productivity of agricultural land and to bearing in mind other economic imperatives. Accordingly, it planned to follow a policy whereby agricultural land would be redistributed to people living in over-populated areas and encouragement would be given to approved black farmers (qualified farmers, graduates from agricultural colleges and universities), with the granting of financial assistance.

7. He stressed that, in Zimbabwe, the land question was extremely emotive and that it was difficult for the two communities to discuss it in a rational manner, separated as they were by age-old prejudices and entrenched positions.

8. In response to the question whether the private sector could participate in the conduct of the land reform programme, he said no, since the industrial and economic sector was monopolized by the white community, which did not support the project.

9. With regard to the criteria to be applied in designating the white owners whose land would be distributed, he explained that such factors as the proximity to congested communal areas and the suitability of the land for more intensive resettlement would be taken into consideration. The Government would endeavour to find a redistribution formula, which ensured that the commercial farmers were not put out of business while ensuring that the farms themselves did not exceed a maximum area. To date, all farmers whose lands had been redistributed had been compensated and the opponents of the systematic payment of compensation were primarily concerned with the unutilized land or nature areas, which clearly should not be subject to compensation. Finally, he said that the redistribution decisions were subject to appeal.

10. Mr. NOBEL (Country Rapporteur) commended the Zimbabwe delegation on the quality of its report and thanked it warmly for the well-organized, enlightening and instructive responses it had provided to the committee members.

11. He wished, however, to draw the attention of the delegation to the 1998 Prevention of Racial Discrimination Act, the text of which had been distributed during the meeting by the delegation. The provisions of that act appeared to meet the requirements of article 2 but not entirely those of article 4 of the Convention. Paragraph 1 of article 6 of the Act, which stipulated that no person should make or knowingly communicate a statement based on racial superiority or hatred, provided a condition - the presence of a substantial risk that the statement may adversely affect the reputation, rights and freedoms of other persons in Zimbabwe - which detracted from its scope and strength, in terms of article 4 of the Convention. While understanding that the Zimbabwean legislature had endeavoured to strike a balance between the needs to prohibit racial discrimination and the wish not to interfere excessively or ineffectively in private conversations, he stated his view that the current text lacked firmness. He hoped that Zimbabwe would adopt a

stronger text, closer to the provisions of article 4, leaving it to the courts to decide on a case-by-case basis whether the risk of adversely affecting the reputations, rights and freedoms of other persons had been attested.

12. Mr. CHINAMASA (Zimbabwe) thanked the Committee for its comments and assured members that Zimbabwe would bear those comments in mind in its efforts to improve the application of the Convention in its territory.

13. The CHAIRMAN thanked the delegation of Zimbabwe for the quality of its report and the sincerity of its statements. Welcoming the constructive and exemplary dialogue which had developed between Zimbabwe and the Committee, he said that the Committee had thus concluded its consideration of the second, third and fourth periodic reports of Zimbabwe.

14. The delegation of Zimbabwe withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

International Women's Day

15. Mr. ABOUL-NASR drew attention to the celebration that day, 8 March 2000, of International Women's Day. He proposed that a message of support and encouragement should be sent to the chairman of the Committee on the Elimination of Discrimination against Women (CEDAW).

16. It was so decided.

Arrangement to follow up the statements and relevant activities of the Office of the High Commissioner for Human Rights

17. At the invitation of the Chairman, Ms. Raadi, coordinator of the international conventions team in the Support Services Branch of the United Nations Office of the High Commissioner for Human Rights and representative of the Secretary-General, took her place at the Committee table.

18. Mr. ABOUL-NASR said that it would be useful for the Committee to have prompt access during its deliberations to the statements by the High Commissioner for Human Rights regarding serious violations of human rights. He suggested that Mr. Banton be entrusted with following up the statements of the High Commissioner, so that the Committee could give them its support, where appropriate, and that the High Commissioner be requested to keep the Committee informed of the results of her efforts to resolve the problems mentioned in her statements. Mr. Banton could draft a working paper which would be considered by an open-ended working group entrusted with receiving and taking into consideration comments transmitted to members of the Committee by member States. The text drafted by the working group would be submitted to the Committee for approval, which would express its opinion on the issues under consideration.

19. The CHAIRMAN said that he took it that the Committee members wished to accept the suggestion put forward by Mr. Aboul-Nasr.

20. It was so decided.

Preparation of draft model concluding observations (CERD/C/56/Misc.14; document distributed in-session, in English only)

21. The CHAIRMAN informed the new members that, during its previous session, the Committee had decided to review the format for its conclusions at the current session, so as to make them more concise and to take into account experience gathered over a number of years. Mr. Banton had prepared draft model concluding observations and the experts were invited to give the draft their consideration.

22. Mr. BANTON explained that the document was only a model and was not intended to be fully applicable in all cases. It contained standard formulations designed to facilitate the work of the secretariat and the country rapporteurs. He read out several amendments which he wished to make to the text.

23. In paragraph 11 of the draft, he proposed the addition of a sentence inviting the international community to be generous towards Governments, to help them alleviate the hardship of displaced persons, on the following lines: "[...] and recommends that all necessary means be taken in order to alleviate their plight; in this respect, the Committee calls on the international community to assist the Government with generosity in this important but difficult task".

24. He suggested that "displaced persons" should be inserted, after "ethnic minorities", in paragraph 15, on access to the courts and to administrative bodies, in the list of persons to whom this access should be available. In paragraph 19, the word "some" before "members" could be deleted, without altering the meaning. Paragraph 20 should be divided into two, the second sentence of the paragraph becoming paragraph 21. The first sentence, concerning the publication of the reports and conclusions of the Committee, could be amended to read: "The Committee recommends that the States' reports be made readily available to the public from the time they are submitted and that the Committee's observations on them be similarly publicized".

25. Ms. ZOU said that it was pointless for the Committee to consider the document paragraph by paragraph, since it was clear that the model would always be adapted to the particular case, and she suggested, if there was no objection, that the Committee members should approve it en bloc. She commended Mr. Banton on having combined the two parts of the old form, namely, "Main concerns" and "Suggestions and recommendations", and on having thereby resolved the problem of repetition, which had worried the Committee.

26. Mr. de GOUTTES agreed with Ms. Zou that the draft was not an immutable instrument, but a suggested guideline which should be used with flexibility, since some paragraphs applied to all States parties and others only to some.

27. Mr. ABOUL-NASR, while supporting the suggestions by Ms. Zou and Mr. de Gouttes, pointed out that in article 9, the Convention stipulated that the Committee should make "suggestions and general recommendations" which should be reported to the General Assembly. He noted that these words had disappeared from Mr. Banton's draft and suggested that, in accordance with article 9, they should appear in the Committee's conclusions.

28. Mr. BANTON said, in response, that the Committee's practice had developed over the years to bring it into line with that of other treaty bodies and that the terms of article 9 had disappeared as a consequence of amendments suggested during meetings of the chairpersons of the bodies established under the international instruments. Recalling that, prior to the 1978 World Conference, the Committee had given its interpretation of certain terms from the Convention, including "suggestions", which covered suggestions to one State party in particular, and "general recommendations", which applied to recommendations to all States parties, he stated his opinion that the form in which the Committee's conclusions were presented had developed in a manner implicitly in line with the terms of article 9.

29. The CHAIRMAN said that the disagreement between Mr. Aboul-Nasr and Mr. Banton was of no consequence because Mr. Banton's draft was a document with no mandatory force, which the country rapporteurs would apply mutatis mutandis.

30. Mr. FALL said that the draft was of particular interest for the new members, since it provided a useful framework. He requested the secretariat to have it translated and circulated.

31. The CHAIRMAN said that the secretariat had taken note of the request.

32. Ms. JANUARY-BARDILL, speaking as a new member, seconded Mr. Fall's request. She had two suggestions regarding the structure of the document: that sections B and C should be reversed, so that it began with positive aspects, and that the concerns and recommendations should be separated.

33. Mr. BANTON said, in response to the previous speaker, that he would have put the sections in the order that she had suggested, were it not for the need to take into consideration the manner in which other treaty bodies presented their conclusions. He did not think it advisable to separate the concerns and the recommendations, as the Committee had done this previously and it had led to numerous repetitions, weakening the potential impact of the document on the reader.

34. Mr. DIACONU congratulated Mr. Banton on having drafted model conclusions with entirely Cartesian logic. This did not mean, however, that the model should be applied to the letter; it should clearly be adapted to each particular situation.

35. Reverting to the comment by Mr. Aboul-Nasr, he did not feel that the difficulties in section B and the concerns in section D overlapped. The factors and difficulties referred to in section B were objective obstacles, attributable not to the State itself but to external circumstances, while the concerns in section D related to the manner in which the State was implementing the Convention or, more precisely, to its inadequacies and shortcomings. The two things were not comparable and could not be taken up together.

36. Finally, he wished briefly to draw the attention of members to paragraph 20 (or 21, in the proposed new version) of the draft. Line 3 of that paragraph said that the State party's next periodic report should be "comprehensive". In practice, a comprehensive report was not required in all cases; it was sometimes sufficient for the country to submit an updated report. Accordingly, he suggested that the word "updated" should be inserted after "comprehensive", with the two words separated by a slash, to read "a comprehensive/updated report".

37. Mr. NOBEL wondered whether the model should not also contain references to the amendment to article 8 and to the declaration provided for in article 14.

38. Mr. SHAHI said that article 9 of the Convention, to which Mr. Aboul-Nasr had referred, concerned both suggestions and recommendations of a general nature which the Committee submitted to the United Nations General Assembly, but, in its conclusions submitted to the State party after consideration of its periodic report, the Committee also formulated recommendations. It was the use of the same term which was the source of confusion, although he was not sure how that could be remedied.

39. Mr. RECHETOV pointed out that the model was a purely hypothetical document.

40. In practice, not only did situations differ widely from country to country, but the very first user of the proposed model would not be the country rapporteur, but the representative of the secretariat, who would inevitably feel bound by the way the document was laid out.

41. When he received the document from the secretariat, the country rapporteur would wonder whether things had really proceeded in that way or whether the representative of the secretariat had merely followed the model. The more stereotyped the procedure followed by the Committee, the greater the restrictions placed on the members of the secretariat responsible for drawing up the first version of the report. This most definitely was not the desired goal.

42. Mr. ABOUL-NASR entirely agreed with the comments of the previous speaker. He questioned the usefulness of such a document and the reasons for its presentation. As far as he knew, the way in which the conclusions had been drafted had never caused any problems in the past.

43. In addition, contrary to what Mr. Banton had said, he did not think it necessary to copy what other committees were doing. Each convention was different and, by endeavouring at any cost to harmonize committee procedures, one risked distorting the meaning of the conventions which they were intended to serve.

44. Mr. BOSSUYT said that use of the word "model" in the heading of the document had perhaps caused a misunderstanding, giving the document an imperative force when it was only meant to be illustrative. It might have been better to have used the word "example".

45. Mr. de GOUTTES said that, in his experience, the drafting of a model or a standard form was never an entirely neutral exercise. It invariably had the effect of guiding or shaping the reasoning of those who used it.

46. If, as the new members had remarked, the document in question could facilitate the work of future rapporteurs, it should not be given an official character nor, in any event, be annexed to the report intended for the General Assembly.

47. The CHAIRMAN suggested that the word "model" in the title of the document should be replaced by "example" or "indicative text".

48. Mr. SHAHI wondered whether - given that the document would be only illustrative in effect - the concerns and recommendations should, in fact, be taken up jointly, as proposed in section D, or if they should continue to be treated separately, as before.

49. Mr. BANTON said that, apart from Ms. January-Bardill, to whom he had explained the reasons for his having chosen this lay-out, everyone appeared to agree that the two points should be taken up together.

50. Ms. JANUARY-BARDILL said that, having heard the explanation by Mr. Banton, she joined the consensus.

51. The CHAIRMAN, summarizing the discussion, said that the Committee members had agreed that the text under consideration was only of an illustrative nature, that it should be translated into the Committee's working languages and that the word "model" in the title should be replaced by "example" or "suggested text". The Committee would, however, accept the suggestion, with regard to section D, that the concerns and recommendations should be dealt with together.

52. It was so decided.

Procedure for consideration of reports in the presence of the delegations from the countries concerned

53. The CHAIRMAN said that certain delegations had no idea of the manner in which the consideration of their reports would be conducted and could, for example, run out of time, putting the Chair in a very awkward position, as he had to interrupt them.

54. Accordingly, he suggested that a short information note should be prepared, for delegations coming to Geneva, telling them what was expected of them both during the presentation of their report, which should not be a mere repetition of its content, and when responding to the questions, by giving concise answers, with any necessary supplementary information provided in the following report.

55. Mr. FALL said that the idea was excellent. When he had been on the delegation of his country, information of that kind would have been extremely useful. The information could simply be included in the letter sent to countries invited to present reports.

56. Mr. NOBEL believed that such a procedure was already followed and he was therefore unable to support the suggestion. If possible, there should be an insistence that delegations

should not repeat in their introduction what was already contained in the report, but should instead give general information, for example, on the conditions under which the report had been drafted or events occurring since it had been compiled.

57. Mr. de GOUTTES supported that suggestion.

58. Mr. SHAHI also thought that the idea was a very good one, provided, however, that excessively tight limitations were not placed on delegations' speaking time. Sometimes, reports were short and could be introduced very quickly, leaving more time available for the exchange of questions and answers and, at other times, the converse applied.

59. The CHAIRMAN said that flexibility appeared to be the key word. The information note would be of a purely illustrative nature and designed exclusively to assist delegations in making their preparations.

60. Mr. RECHETOV said that it was vital to be very flexible when allotting time. It sometimes happened, for example, that a very short report, which could be presented in several minutes, was supplemented with a number of annexes not necessarily available in languages familiar to Committee members and their content needed explaining. This meant that more time was required for the presentation but that the Committee was better informed as a result, and exceeding the recommended time limits in this way was useful.

61. Mr. ABOUL-NASR said that, if delegations of States parties were to be asked to stick to time limits, the Committee should also show some discipline in this regard. The irresistible conclusion was that adoption of the country rapporteur system had not enabled the Committee to gain any time when meeting to consider the reports. The Committee should give more attention to the answers and to the information provided orally by the delegation and should not be content merely to react to what was said in the report. In addition, the Committee's working methods should be harmonized and all States parties given equal treatment.

62. The CHAIRMAN said that the point raised by the previous speaker regarding the management of time was very pertinent, since certain presentations by rapporteurs were much too long. Experience showed that 30 minutes was usually sufficient for the presentation of a report. Committee members should endeavour to keep their own statements brief and to avoid repeating one another.

63. Mr. BANTON, reacting to Mr. Aboul-Nasr's suggestions, said that, if the Committee members did not take into account information provided orally by delegations, it was perhaps because they were only human and could not remain alert for more than a certain period of time. Delegations should be made aware of this consideration, which should be mentioned in the letter.

64. Mr. de GOUTTES said that efforts should be made to ensure that delegations had the necessary time to respond to all the Committee's questions. If the Committee was to have a fruitful dialogue with delegations, States parties should be given time to prepare their reports and, to this end, should not be held to a tight deadline for the submission of their reports, since they would not be considered for at least one, if not two, years.

65. The CHAIRMAN suggested that Mr. Banton should draft, in consultation with the Committee secretariat, a letter to inform delegations about the conduct of the Committee's meetings and the requested time limits for statements, while indicating that the information was of an indicative nature. Flexibility should be maintained and the mutatis mutandis principle followed.

66. It was so decided.

Working methods for the procedure for determining the admissibility of communications submitted under article 14 of the Convention

67. The CHAIRMAN recalled that the Committee had to decide whether it wished to appoint a special rapporteur or a working group to consider communications received under article 14 of the Convention and to make recommendations to the Committee regarding their admissibility. He invited Mr. Nobel to report on his consultations with Committee members on this matter.

68. Mr. NOBEL said that the current manner in which those communications were handled was not satisfactory and he recommended that a small working group (three people) should be established. The group should be set up as soon as possible and should meet during the Committee's current session.

69. The CHAIRMAN referred to paragraph 1 of rule 87 of the Committee's rules of procedure stating that the mandate of the working group would consist in "making recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications laid down in article 14 of the Convention and assisting the Committee in any manner which the Committee may decide".

70. Mr. ABOUL-NASR pointed out that, to date, the secretariat had performed that function.

71. The CHAIRMAN said that the secretariat would continue to perform the function of assisting the working group or the rapporteur.

72. Mr. ABOUL-NASR wondered how the other bodies established under international human rights instruments were organized for the purpose of dealing with communications from individuals and whether there would be financial implications if the working group met outside the Committee's sessions.

73. Ms. RAADI (Coordinator of the international conventions team in the support services branch of the Office of the United Nations High Commissioner for Human Rights and representative of the Secretary-General) said in response that, if the Committee decided to establish a working group which had to meet outside the Committee's sessions, there would be financial implications. As for the practices of the other bodies mentioned, only the Committee on the Rights of the Child and the Human Rights Committee had intersessional working groups.

74. Mr. de GOUTTES said that he supported the establishment of a working group on condition that the group would be supported by the secretariat and would not have to meet outside the Committee's sessions, since some experts would have difficulties in making themselves available when required and the meetings would have financial implications.

75. The CHAIRMAN suggested that the Committee agree on the establishment of a working group comprising three experts which would meet during the Committee's sessions and would be assisted by the secretariat, for the purpose of examining communications and making suggestions to the Committee regarding their admissibility.

76. It was so decided.

The meeting rose at 1 p.m.